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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/719,392	11/21/2003	Gary A. Gillis	20002.124	2572
7590	05/03/2005		EXAMINER	
Christopher J. Fildes Fildes & Outland, P.C. Suite 2 20916 Mack Avenue Grosse Pointe Woods, MI 48236			GEHMAN, BRYON P	
			ART UNIT	PAPER NUMBER
			3728	
DATE MAILED: 05/03/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/719,392

Applicant(s)

GILLIS ET AL.

Examiner

Bryon P. Gehman

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

Art Unit: 3728

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1 and 4-7 are rejected under 35 U.S.C. 103(a) as being unpatentable

over Hall (3,920,179) in view of one of Friesen et al. (3,475,767) and Nye et al.

(5,997,178). Hall discloses a waste container for receiving thrown up stomach contents (vomit), the container comprising an elongated moisture proof bag (10) having an open end and a rigid ring (11 or 20). Friesen et al. and Nye et al. each disclose an antimicrobial agent (see column 6, lines 21-27; column 3, lines 7-23) provided in a waste container. To modify the waste container of Hall employing an antimicrobial agent as taught by either one of Friesen et al. and Nye et al. would have been obvious in order to render the waste contents safer to handle.

As to claims 5 and 6, Friesen et al. disclose polyethylene (column 7, line 69-column 8, line 14).

As to claim 7, Friesen discloses the agent as part of the bag (see column 6, lines 4-27).

3. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hall in view of one of Friesen et al. and Nye et al.. The structural combination has been

Art Unit: 3728

explained above. To merely provide the combination would have been obvious for the same reasons.

4. Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claim 1 above, and further in view of Einbinder (5,406,650).

Einbinder discloses providing an antimicrobial agent in solid form or as a powder (see column 3, lines 11-24). To modify the waste container further employing known alternatives of antimicrobial agent forms as disclosed by Einbinder would have been obvious as a substitution of field-recognized equivalent structures.

5. Claim 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claim 1 above, and further in view of Williams (5,041,264). Williams discloses a waste container comprised of polyethylene and an antimicrobial agent as a component of the waste container material. To modify the combination further employing the material and antimicrobial agent as a component of the container would have been obvious in view of Williams as a field-recognized manner of incorporating antimicrobial agents in a container.

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

7. Claims 1 and 4-13 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1, 1, 1, 1, 1, 6, 2, 3, 6 and 1, respectively, of U.S. Patent No. 6,874,936 in view of one of Friesen et al. and Nye et al.. Friesen et al. and Nye et al. each disclose an antimicrobial agent (see column 6, lines 21-27; column 3, lines 7-23) provided in a waste container. To modify applicants' previous waste container employing an antimicrobial agent as taught by either one of Friesen et al. and Nye et al. would have been obvious in order to render the waste contents safer to handle.

As to claims 5 and 6, Friesen et al. disclose polyethylene (column 7, line 69-column 8, line 14).

As to claim 7, Friesen discloses the agent as part of the bag (see column 6, lines 4-27).

8. Claims 2 and 3 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the art as applied to claim 1 above, and further in view of Einbinder (5,406,650). Einbinder discloses providing an antimicrobial agent in solid form or as a powder (see column 3, lines 11-24). To modify the waste container further employing known alternatives of antimicrobial agent forms

Art Unit: 3728

as disclosed by Einbinder would have been obvious as a substitution of field-recognized equivalent structures.

9. Claims 5-7 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the art as applied to claim 1 above, and further in view of Williams (5,041,264). Williams discloses a waste container comprised of polyethylene and an antimicrobial agent as a component of the waste container material. To modify the combination further employing the material and antimicrobial agent as a component of the container would have been obvious in view of Williams as a field-recognized manner of incorporating antimicrobial agents in a container.

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Shown are waste containers analogous to applicants' disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bryon P. Gehman whose telephone number is (571) 272-4555. The examiner can normally be reached on Monday through Wednesday from 5:30am to 6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu, can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3728

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Bryon P. Gehman". The signature is fluid and cursive, with the first name "Bryon" being more prominent.

Bryon P. Gehman  
Primary Examiner  
Art Unit 3728

BPG